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APR 23 2009

OFFICE OF PETITIONS

In re Application of Henkel et al.	:	
Application No. 10/599,812	:	Decision on Petition
Filing Date: October 10, 2006	:	
Attorney Docket No. 9771-015US	:	

This is a decision on the petition under 37 CFR 1.137(a), filed January 21, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The Office mailed a non-final Office action on March 18, 2008. The Office did not receive a reply to the Office action. As a result, the application became abandoned on June 19, 2008. A Notice of Abandonment was mailed on October 16, 2008.

Petitioner requests the application be revived pursuant to 37 CFR 1.137(a). Petitioner states the delay in responding to the March 18, 2008 Office action was unavoidable because the Office action was never received.

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed and delivered to the address of record. In order to overcome this presumption, a petition alleging non-receipt of an Office action must:

- (1) State that the Office action was not received,
- (2) State the system used for recording USPTO correspondence at the address of record,
- (3) State a search of the file jacket or the equivalent has been made,
- (3) State a search of all relevant docket records has been made, and
- (4) Include a copy of the record(s) used by practitioner where the non-received Office action would have been entered had it been received.

In addition to the items above, the petition must include a copy of the relevant part of the firm's master docket or state a master docket does not exist. The relevant part of the master docket is

the part showing replied docketed for the due date set forth in the Office action or Notice that was not received by a petitioner. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action should be submitted. if a master docket does not exist, a petitioner should explicitly state a master docket does not exist and provide additional evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has failed to provide the evidence necessary to prove non-receipt of the Office action. Therefore, the petition cannot be granted.

Any renewed petition under 37 CFR 1.137(a) should include the showing necessary to prove non-receipt of the March 18, 2008 Office action.

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee (\$1,620 for a large entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.


A copy of a PDF "fillable" version of a petition under 37 CFR 1.137(b) form can be found at: http://www.uspto.gov/web/forms/sb0064_fill.pdf.

Unless filed by EFS Web, further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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